IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.3790 OF 2004

Shri Deepak Dhansing Patil
Age - 27 years, Occu: Education
Residing at 13/A, 1st floor,
Deo Building, Thube Park,
Shivajinagar, Pune--411 005. : Petitioner
(Orig. Defendant)

V/s.

1. Shri Girish Damodar Deo
   Age - 42 yrs., Occu: Service
2. Shri Nitin Damodar Deo
   Age - 31 yrs., Occu: Business
   Both residing at 25 Bharatkunj,
   Society No.2, Erandavana,
   Pune--411 038. : Respondents
(Orig. Plaintiffs)

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Ms Revati Mohite-Dere for the petitioner.

Mr.R.G.Ketkar for the respondents.

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CORAM : S.A. BOBDE, J.

June 16, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Ketkar waives service of rule on behalf of the respondents.

Heard by consent.

2. The petitioner has challenged the impugned order rejecting his application for dismissal of the suit on the ground of jurisdiction. The petitioner-defendant has sought eviction of the respondents-plaintiffs on the basis that the petitioner is a gratuitous licensee vide para 2 of the plaint at exh.‘A’. On these averments, they have

sought a declaration that the defendants are gratuitous licensees and their licence be terminated and revoked.

3. This suit is admittedly filed in the Court of Small Causes at Pune. It is a settled law vide Ramesh D. Mehra v. Indravati D. Mehra (2001 (4) Bom.C.R. 417) that a suit against a gratuitous licensee will lie only before a Civil Court and not the Court of Small Causes in view of section 41 of the Presidency Small Causes Courts Act, 1882.

4. Having regard to the settled position in law that the question of jurisdiction must be determined in accordance with the averments in the plaint, the petitioner having been described as a gratuitous licensee, it is not possible to appreciate the reasoning of the trial Court that the question of jurisdiction involves a mixed question of law and fact and, therefore, evidence is necessary to determine the said facts. The most relevant fact is pleaded by the respondents-plaintiffs themselves that the petitioner is a gratuitous licensee. Having regard to the Division Bench judgement of this Court in Ramesh D. Mehra's case (supra) involving section 41, it is clear that the issue of jurisdiction is one of law alone. Thus, having regard to the provisions of Order 14 Rule 2, I am of view that the issue involves a decision on a question of law alone and would not result in

miscarriage of justice.

5. The issue pertains to the jurisdiction of the Court and it is not necessary for the Court to decide all other issues if the suit can be disposed of on the question of law alone.

6. Mr.Ketkar, learned counsel for the respondents, submitted that the suit is at the stage of recording of evidence and the Court may be required to pronounce the judgment on all issues in accordance with Order 14 Rule 2(1). Order 14 Rule 2 reads as follows:-

> **"2. Court to pronounce judgement on all issues.--**(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgement on all issues.
>
> (2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to--
>
> (a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

However, it must be noted that sub-rule (1) is made subject to the provisions of sub-rule (2) which provides that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to the jurisdiction of the Court, or a bar to the suit created by any law for the time being in force and further the Court may deal with the suit in accordance with the decision on that issue. The mandate is clear. If the Court finds that it has no jurisdiction, it must dismiss the suit. If it finds it has, it must proceed to decide the suit. A reading of sub-rule (2) suggests that this may be done where the issues have not been settled, since it provides for postponement of the settlement of other issues after the issue of jurisdiction has been determined. However, merely because issues have been settled, I am of view that the principle underlining sub-rule (2) is not obviated. It cannot be said that

Parliament intended that the Court should ignore an issue of jurisdiction which can be decided in law alone merely because issues have already been framed. It must be remembered that this is merely a procedural matter.

7. Ms Mohite-Dere, learned counsel for the petitioner, relied on a decision of the Supreme Court in Pearlite Liners (P) Ltd. v. Manorama Sirsi (2004) 3 S.C.C. 172, in which the Supreme Court has observed in para 10 of the report at page 177 as follows:-

> "Thus, none of the reliefs sought in the plaint can be granted to the plaintiff under the law. The question then arises as to whether such a suit should be allowed to continue and go for trial. The answer in our view is clear, that is, such a suit should be thrown out at the threshold. Why should a suit which is bound to be dismissed for want of jurisdiction of a court to grant the reliefs prayed for, be tried at all? Accordingly, we hold that the trial court was absolutely right in rejecting the plaint and the lower appellate court rightly affirmed the decision of the trial court in this behalf. The High Court was clearly in error in

> passing the impugned judgement whereby the suit was restored and remanded to the trial court for being decided on merits. The judgement of the High Court is hereby set aside and the judgements of the courts below, that is, the trial court and the lower appellate court are restored. The plaint in the suit stands rejected."

Having regard to the observations reproduced above, I am of view that the trial Court must decide the question of jurisdiction raised by the petitioner as a preliminary issue.

8. It must be noted that a considerable delay has been caused not due to the petitioner but due to the pendency of the matter in this Court during which time the issues have been settled. Therefore, mere settlement of issues cannot be held against the petitioner.

9. In this view of the matter, the rule is made absolute in the above terms. There shall be no order as to costs.

Sd/-

S.A. BOBDE, J.